

Appellant's Opening Statement

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<p>1 prescription meds or herbal supplements in a single 2 plastic container, so as not to travel with eight or 3 nine different prescription or herbal supplement 4 containers. That's what they found.</p> <p>5 And -- and Ms. Tweed made the statement 6 to the police that it was against the law to have 7 prescription medication in a container that's not a 8 labeled -- not a prescription-labeled container. And 9 initially -- initially he didn't remember -- when being 10 bombarded with accusations that all kinds of narcotics 11 and drugs were found in his locker, he didn't remember 12 those prescriptions years earlier for hydrocodone. He 13 hadn't taken it for years.</p> <p>14 And so later on, when he interviewed with 15 Officer Madrid, he says, "I might have a prescription 16 for it. I'm not sure." But he'd already been charged. 17 And -- and he had to present that prescription 18 medication at trial. He had to testify at trial as to 19 his understanding of what he was authorized to do with 20 the expired and discontinued meds. And a jury took 21 about a half hour to acquit him.</p> <p>22 But this was after an earlier mistrial. 23 And the mistrial occurred because of Ms. Tweed. She 24 was called as a witness. The witnesses were instructed 25 during their testimony -- the BHI witness. There was a</p>	<p>1 removing and segregating nonprescription -- or I'm 2 sorry, discontinued or expired medications. And -- and 3 completing all the shopping of the clothing allowance 4 before returning it back to the financial management 5 office.</p> <p>6 And as a result, we don't believe that 7 the evidence will show that there's just cause for this 8 termination. And -- and even if, as Ms. Corinne 9 Dominguez says, that he may have deviated from some of 10 the policies, there was mitigating and important 11 reasons why he may have deviated, if he deviated at 12 all, from those policies. And that had to do with 13 patient safety, receiving the checks involved, and -- 14 and so forth, Your Honor.</p> <p>15 ALJ COOPER: Okay. Thank you. 16 Okay. Do you want to call your first 17 witness?</p> <p>18 MR. TREMAINE: Yes, Your Honor. We 19 call --</p> <p>20 MR. ROMERO: Your Honor, could I have 21 just a minute break to use the bathroom once more?</p> <p>22 ALJ COOPER: Absolutely. Absolutely. 23 Let's take five. 24 (Off the record.) 25 ALJ COOPER: Okay. The time is 11:01.</p>
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<p>1 couple of them; Mr. Chavez, Mr. Schaeffer, the 2 investigator who did the internal review investigation, 3 and Ms. Tweed. They were instructed not to address -- 4 during their factual presentation of the case, not to 5 bring up the clothing allowance monies that were found 6 in the desk because Mr. Vigil had not been charged with 7 anything related to that.</p> <p>8 Well, Ms. Tweed brought it up during her 9 testimony, a mistrial was declared, and Mr. Vigil had 10 to wait another year and change to get his day in 11 court.</p> <p>12 So, Your Honor, at the -- at the end of 13 the day, BHI had a lot to do with, in -- in our 14 contention, with the criminal case, with the delay of 15 this case before Your Honor, and -- and I think the 16 evidence will clearly show with regard to the -- to the 17 Notice of Final Action and the policies that he is 18 specifically and expressly on notice and alleged to 19 have violated, he didn't violate. And I'm prepared to 20 describe during the factual presentation and 21 examination of the witnesses why he didn't violate 22 them.</p> <p>23 And Mr. Vigil [sic], his predecessor, 24 will testify that everything that John did in this case 25 was the identical things that he did in terms of</p>	<p>1 We're back on the record. 2 Okay. Good morning. 3 THE WITNESS: Good morning. 4 ALJ COOPER: I need to swear you in. Can 5 you raise your right hand?</p> <p>6 FRANCES TWEED, 7 called as a witness on behalf of the appellee, having 8 been first duly sworn, was examined and testified under 9 oath as follows:</p> <p>10 ALJ COOPER: Thank you. 11 Can you state and spell your name for the 12 record?</p> <p>13 THE WITNESS: Frances Tweed. 14 F-r-a-n-c-e-s T-w-e-e-d.</p> <p>15 ALJ COOPER: Thank you very much. 16 So I've already introduced myself to you. 17 I'm Jessica Cooper, the hearing officer for the State 18 Personnel Board, and I'm conducting this hearing 19 requested by Mr. Vigil concerning the disciplinary 20 action taken against him by the Department.</p> <p>21 I am making a recording of the 22 proceeding. That black gadget in front of you is your 23 microphone. You don't have to speak directly into it. 24 Just keep your voice up, okay? 25 THE WITNESS: Yes.</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 98</p> <p>1 Q. Okay. And correct me if I -- well, tell me 2 again how long it takes to get from either cottage to 3 the pharmacy. 4 A. About five minutes. 5 Q. Okay. Okay. 6 So big picture question, Ms. Tweed. Would 7 it ever be appropriate within NMBHI to store expired, 8 discontinued, or contaminated medication outside of the 9 medical room? 10 A. No. 11 Q. Okay. So I'm going to get to this incident in 12 2015 which you were involved in. 13 Can you tell us how you became involved in 14 an -- the incident that we're here for involving 15 Mr. Vigil and storage of medication? 16 A. The administrator at the time, Dr. Troy Jones, 17 asked me to -- to contact our Human Resource Bureau, 18 Elona Cruz, and ask how to proceed after he -- we -- 19 administration received an anonymous letter stating 20 that Mr. Vigil had some patient medications stored in 21 his office. I think it said his desk. And also 22 that -- some money, patient money. 23 So he asked me to consult with Santa Fe 24 Human Resource Bureau, who oversees Department of 25 Health, our operations. And I was told by Elona that</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Okay. So in terms of your role as executive 2 nurse administrator at the time, what is your concern 3 when you receive any type of report of that nature? 4 A. Well, it's a possibility of exploiting a 5 patient. It was exploitation if it -- you know, 6 especially if it didn't belong -- 7 Q. Uh-huh. 8 A. It belongs in the med room, but it wasn't 9 there. So it was significant enough that -- because it 10 was an anonymous letter, we weren't sure exactly how to 11 proceed with that. 12 Q. Okay. 13 A. So that's why we consulted with our Human 14 Resource Bureau director, Elona Cruz, and asked her, 15 you know, "What do we do with this?" 16 Q. So pursuant to your discussion with Ms. Cruz, 17 what steps did you take to respond to that letter? 18 A. After I spoke to her, I communicated with 19 Dr. Jones. And she was specific that she wanted for 20 the people to -- to go into the office and the desk 21 area was -- she wanted it to be me -- our internal 22 review director at the time was Antonio Coca. And then 23 our director of security or -- or security supervisor, 24 Joseph Chavez. 25 So she asked that the three of us go to the</p>
<p style="text-align: right;">Page 99</p> <p>1 we should search the locker. His office. I mean, his 2 desk. 3 Q. Okay. Can you say for certain where that 4 anonymous letter came from? 5 A. No. 6 Q. Okay. And can you explain to us how -- how 7 the letter was received? 8 A. It was an interoffice envelope. And I believe 9 it was different -- the same letter was delivered to 10 administration. I think it was -- it was either to 11 Troy or Charles Jaramillo, who was our chief operating 12 officer. 13 One went to standards and compliance, I 14 believe to Rose Contreras, who was a director of 15 standards and compliance. 16 Q. Uh-huh. 17 A. And a third letter I believe went to the 18 patient advocate or -- 19 Q. Uh-huh. 20 A. -- some -- I think -- I believe that's what it 21 was. 22 Q. Okay. And that -- that anonymous letter you 23 said indicated that Mr. Vigil had patient medications 24 and -- and money in certain locations? 25 A. In his office. I think it said in his desk.</p>	<p style="text-align: right;">Page 101</p> <p>1 cottage where his office was and do an inspection to 2 see if indeed there were medications and money stored 3 there. 4 Q. Did you personally take part in going to the 5 office and -- and looking? 6 A. I did. 7 Q. Okay. Can you tell us -- can you walk us 8 through going to that -- strike that. Let me back up. 9 Can you recall when you received -- when 10 you received the anonymous letter, when you first 11 became aware of it? 12 A. I didn't receive the first letter. They were 13 two separate letters. 14 Q. Uh-huh. 15 A. I was told by Dr. Jones -- I don't remember 16 exactly the date the letter arrived at standards or to 17 these offices. I can't remember the exact date. I 18 know it was at the beginning of June. 19 Q. Okay. So beginning of June 2015? 20 A. '15. 21 Q. Okay. So now can you please walk us through 22 your involvement in going to the office and -- and 23 following up? 24 A. Okay. Security, Joe Chavez, Mr. Coca, and I 25 went to the unit. I believe that we had to get a key</p>

<p style="text-align: right;">Page 102</p> <p>1 because it was a key to the office that I didn't have.</p> <p>2 So I think that -- I don't remember if Mr. Chavez had</p> <p>3 to secure a key to get into the office.</p> <p>4 We got in there and realized that the</p> <p>5 medication was in a cabinet that locked with a padlock.</p> <p>6 And so that was where the medication was.</p> <p>7 Q. So how -- if it was in a locked cabinet, how</p> <p>8 did you realize that the medication was located there?</p> <p>9 A. I believe Mr. Chavez was able to peek in and</p> <p>10 he was able to see that there were some bottles in</p> <p>11 there.</p> <p>12 Q. Okay. And what happened next?</p> <p>13 A. I believe, as I recall, because this was years</p> <p>14 ago, that the decision was made to -- to cut the</p> <p>15 padlock so that we could look in there. And I believe</p> <p>16 Mr. Vigil was on vacation, so he was not on duty.</p> <p>17 Either that or he had called in sick. But I know he</p> <p>18 was not on duty that day.</p> <p>19 Q. Okay. Are you able to say -- from your last</p> <p>20 response, I -- am I to understand that you could not</p> <p>21 say when he was out or the duration and when he was on</p> <p>22 leave or sick?</p> <p>23 A. I would have to look at the schedule to know</p> <p>24 if he was on a scheduled vacation or if he was on sick</p> <p>25 leave. I can't remember --</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Okay. Could I refer you to Department's</p> <p>2 Exhibit 22? And these are -- just for clarification,</p> <p>3 these are individually labeled with sub numbers. And I</p> <p>4 want to talk to you right now about 22, dash, some</p> <p>5 zeros, 1 all the way through number 6. Could you</p> <p>6 review, please 22-1 through 22-6, and let me know if</p> <p>7 you recognize those.</p> <p>8 A. Yes.</p> <p>9 Q. So let's just start at the beginning. 22,</p> <p>10 dash, zeros, 1, what is depicted in that?</p> <p>11 A. Some Southwest Capital Bank envelopes and a</p> <p>12 Priority Mail. I'm not sure what's in there.</p> <p>13 Q. Okay.</p> <p>14 A. Package.</p> <p>15 Q. And is it -- in 01 is -- would there be any</p> <p>16 reason to have client funds in a Priority Mail</p> <p>17 envelope?</p> <p>18 A. No.</p> <p>19 Q. And do you have an understanding of what is</p> <p>20 contained in the Southwest Capital Bank envelopes?</p> <p>21 A. I didn't at the time.</p> <p>22 Q. Okay. Have you learned of what is contained</p> <p>23 in those envelopes since?</p> <p>24 A. Yes. I understand that there was money in</p> <p>25 there.</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Okay.</p> <p>2 A. -- if he had called in that day.</p> <p>3 Q. Okay. So there was a review -- there was --</p> <p>4 Mr. Chavez and you were in the office and you looked,</p> <p>5 you -- you located medication in the cabinet, right?</p> <p>6 A. After the broke -- the lock was broken,</p> <p>7 correct.</p> <p>8 Q. Okay.</p> <p>9 A. Uh-huh.</p> <p>10 Q. Okay. So what happened then?</p> <p>11 A. After we figured out what was in there, we --</p> <p>12 I made another phone call to Ms. Cruz and asked her if</p> <p>13 we should notify the police because we weren't sure if</p> <p>14 a crime had been committed, based on the fact that</p> <p>15 these medications are prescribed medications that were</p> <p>16 found in there.</p> <p>17 Q. Uh-huh.</p> <p>18 A. Risperdal, which is an antipsychotic medication</p> <p>19 that requires a prescription. So I was advised to go</p> <p>20 ahead and contact the police. And we put everything</p> <p>21 back as we found it. We put a different lock on the --</p> <p>22 on -- in the area, on the cabinet.</p> <p>23 Q. Okay. Did anyone take photographs during that</p> <p>24 time period?</p> <p>25 A. Yes. Mr. Chavez did take photographs.</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. And how did you become aware of that?</p> <p>2 A. I believe after the police did their search.</p> <p>3 Q. Okay. Did you receive an inventory of any</p> <p>4 kind?</p> <p>5 A. I didn't. The administrator did. I did not.</p> <p>6 Q. Okay. And what is your understanding of the</p> <p>7 nature of what's contained in the envelopes?</p> <p>8 A. Money, but I don't know how much.</p> <p>9 Q. Okay. Do you know where that money came from</p> <p>10 or what its purpose was?</p> <p>11 A. My understanding that it was patient funds,</p> <p>12 because there were some receipts also with the</p> <p>13 envelopes.</p> <p>14 Q. Okay. All right.</p> <p>15 So briefly, 22-02. This -- do I understand</p> <p>16 your response to mean that you -- you've recognized all</p> <p>17 six of these photographs that I've referenced?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Thank you.</p> <p>20 And the -- fair to say that this is a</p> <p>21 picture of someone cutting the lock on -- that we</p> <p>22 referenced earlier?</p> <p>23 A. Yeah.</p> <p>24 Q. All right.</p> <p>25 A. That's Mr. Chavez's arm.</p>

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1 Q. Okay. And so is -- is this the same cabinet
2 or -- or desk, if you will, that the -- that the
3 medications were located in?
4 A. Yes.
5 Q. Okay. The top part, the lock that is being
6 cut, what was contained behind those doors?
7 A. That was where the medication and the
8 envelopes and other items were inside.
9 Q. Okay. And then Exhibit 22-03?
10 A. That was inside that cabinet that the lock was
11 just broken.
12 Q. Okay. So this is the top of the cabinet, this
13 is where Mr. Chavez --
14 A. Yep.
15 Q. -- noticed the medications?
16 A. Right.
17 Q. Okay.
18 03 here is -- is redacted. Have you
19 reviewed -- are you aware of whose prescriptions these
20 are?
21 A. It was two of the patients, the current -- the
22 patients that were at the ALF at that time.
23 Q. Okay. So these prescriptions, there's three
24 bottles depicted here. Were they identified as
25 prescriptions belong to someone other than Mr. Vigil?

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1 A. Yes.
2 Q. And all of them were belonging to patients?
3 A. Yes. Or residents. I believe they call them
4 residents.
5 Q. Residents.
6 A. Yeah.
7 Q. Thank you.
8 Skipping past 4.
9 The 22-05, is this -- is this the same --
10 depicting the same area or medications that were in 03?
11 A. Yes.
12 Q. Okay. And this is a -- a closeup, so were you
13 able to -- and were you at the time able to identify
14 what type of prescription this is?
15 A. Yes.
16 Q. Okay. And it -- what was your understanding
17 of the -- of the drug contained in the --
18 A. That's what -- the risperidone is an
19 antipsychotic --
20 Q. Okay.
21 A. -- prescription drug. Right.
22 Q. Is that -- is that a scheduled drug?
23 A. No.
24 Q. Okay. Thank you.
25 And is there -- okay.

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1 I'm going to direct you to 22-06. Do you
2 recognize that?
3 A. Yes.
4 Q. And so what is that?
5 A. When we discovered, we weren't sure what it
6 was, but we knew that it was in a paper cup that's
7 usually used to give the cup to the patient. So took a
8 picture of it and had -- was labeled. So when I
9 returned to my office, I looked it up on our intranet.
10 There's a pharmacology website that we have access to,
11 to identify drugs. And identified it as clonazepam.
12 Q. Okay. Are you aware that at least the police
13 officer took a position that you indicated it was
14 Ativan?
15 A. I don't know that I'm the one that said it was
16 Ativan. I believe that the initial note said that he
17 had Ativan.
18 Q. Uh-huh.
19 A. I think when I was talking to the police
20 officer, I was explaining that it -- Ativan and
21 clonazepam are basically the same medication. One is
22 short-acting, one is long-acting. One's a generic, the
23 other -- you know, they might be generic. So it's a
24 similar drug.
25 Q. Uh-huh.

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1 A. It's almost like ibuprofen, where you -- it's
2 a generic, but you might have different brand names
3 that contain ibuprofen. So I think that that might
4 have been part of the confusion. I know that the
5 initial note --
6 Q. Uh-huh.
7 A. -- that sent also said that he had Ativan in
8 his locker.
9 Q. Okay.
10 A. Or in his desk. I'm sorry.
11 Q. So at this point, once you and Mr. Chavez had
12 found these medications in the cabinet and the money
13 that was in the drawer and took the photographs, what
14 was the next step that you took?
15 A. Well, we locked it again. We put a -- we
16 locked it up, put a different lock on it, and then
17 referred back to Human Resource Bureau to ask what do
18 we do from there.
19 Q. Okay.
20 A. And completed an incident report.
21 Q. Okay. Did you ultimately notify law
22 enforcement?
23 A. I did.
24 Q. Okay. And so can you briefly outline what the
25 decision-making process was in terms of -- in terms of

<p style="text-align: right;">Page 110</p> <p>1 notifying law enforcement and outline for us what 2 concerns you had that motivated that notification? 3 A. Well, what I mentioned before is that I wasn't 4 sure if a crime had been committed. 5 Q. Uh-huh. 6 A. What -- finding the risperidone and that one 7 pill. So I called the state police, just to notify 8 them. And then believe that they ended up sending the 9 sheriff's department instead of the state police. 10 We opted not to remove anything until they 11 had a chance to review it to see, you know, if they 12 were going to take any action. And we were going to 13 proceed with an internal investigation, which is 14 normal, because -- because it was possible 15 exploitation, I had to complete a incident report and 16 report it to Department of Health Improvement. 17 Our process is that whenever we report any 18 allegation of abuse, neglect, or exploitation, we 19 conduct an internal investigation. 20 Q. Okay. So let's talk about the internal 21 investigation process. 22 Do you -- I believe that you said that you 23 were the director of standards compliance at one time? 24 A. Uh-huh. 25 Q. Okay. And that -- that would be responsible</p>	<p style="text-align: right;">Page 112</p> <p>1 internal review investigation? 2 A. Not necessarily. We might -- we might wait 3 and see what's going to happen. And I -- to be honest, 4 I do not know what happened in this case because I was 5 not administratively responsible -- 6 Q. Uh-huh. 7 A. -- for the admin- -- assisted living facility, 8 so I don't know if they did a concurrent investigation, 9 if they waited for the police to start their 10 investigation. But it really was dependent on that 11 specific case. 12 Q. Okay. So I just want to make sure we're clear 13 on this. 14 At this time, is it true that you had 15 clinical oversight of CBS and were responding in that 16 capacity because of the medication? 17 A. I was responding because the administrator 18 told me to respond. 19 Q. Okay. 20 A. It could've been somebody else. He could've 21 asked the division director to respond. 22 Q. Right. Okay. 23 A. He could've asked the director of nurses to 24 respond. But he asked me to do it, so that's the 25 reason that I did it.</p>
<p style="text-align: right;">Page 111</p> <p>1 for internal review, correct? 2 A. Right. 3 Q. Okay. 4 A. And investigate and reported to the director 5 of standards compliance. 6 Q. So in a situation where you have a report of 7 inappropriately stored medication or diverted 8 medication, anything of that nature, you conduct an 9 internal review investigation? 10 A. If we suspect abuse, neglect -- abuse, 11 neglect, exploitation, or we also investigate, like, 12 significant injuries. 13 Q. Uh-huh. 14 A. Sometimes theft. Those kinds of issues get 15 investigated. 16 Q. Okay. And since law enforcement was notified 17 in this case, can you explain what happens to the -- 18 the IR investigation while law enforcement is involved? 19 A. They usually take two different paths. 20 Q. Uh-huh. 21 A. Normally we would start and see what the 22 police are going to do. And independent of that 23 investigation, we would conduct our own. 24 Q. Okay. If the police are pursuing an 25 investigation, is it normal or customary to suspend the</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. Okay. Okay. Thank you. 2 I guess what I'm trying to put a point on 3 is storage of medications and -- and possible diversion 4 of medications would have been something that was 5 within your job duties because it would -- it would be 6 under the clinical side of the assisted living 7 facility? 8 A. That's correct. 9 Q. Okay. 10 A. Yeah. 11 Q. Thank you. 12 All right. And the investigation would've 13 been handled by HR and on the administrative side; is 14 that fair? 15 A. Standards compliance. The Internal Review 16 Department. 17 Q. Okay. And in -- in terms of -- in terms of 18 the discussions down the road, that resulted in 19 disciplinary action. Was that something that you were 20 aware of? 21 A. Okay. Standards compliance, the investigators 22 are strictly fact-finders. 23 Q. Uh-huh. 24 A. After they complete the investigation, the 25 supervisor, whoever supervises the person, is the one</p>

<p style="text-align: right;">Page 114</p> <p>1 who would oversee the -- would review the</p> <p>2 investigation. They would consult with human resources</p> <p>3 and possibly Human Resource Bureau in Santa Fe --</p> <p>4 Q. Uh-huh.</p> <p>5 A. -- to determine what type of discipline, if</p> <p>6 any, is to be taken. Because Corinne Dominguez was the</p> <p>7 administrator --</p> <p>8 Q. Uh-huh.</p> <p>9 A. -- in the ALF and also the clinical director</p> <p>10 for Community Based Services, she's the one that</p> <p>11 oversaw the investigation. I never saw it. I was not</p> <p>12 going to be the one that took any disciplinary action,</p> <p>13 so I -- I did not review the investigation.</p> <p>14 Q. Okay. So you did not review Peter Schaeffer's</p> <p>15 report of investigation?</p> <p>16 A. That's correct.</p> <p>17 Q. And you were not directly involved in</p> <p>18 discussions or determination of what disciplinary</p> <p>19 action to take?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. That was Corinne Dominguez, in</p> <p>22 consultation with whoever she consulted with?</p> <p>23 A. Correct.</p> <p>24 Q. Okay.</p> <p>25 So moving forward, what is the -- what is</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Okay. And when in time did this happen</p> <p>2 compared to the first search?</p> <p>3 A. Oh, I believe it was, like, a week apart.</p> <p>4 Maybe not even.</p> <p>5 Q. Okay.</p> <p>6 A. I -- I would have to look and -- I'm not</p> <p>7 positive.</p> <p>8 Q. Uh-huh. Some time had transpired?</p> <p>9 A. Uh-huh. Sometime in June.</p> <p>10 Q. The -- going to direct you to the rest of</p> <p>11 these exhibits, 22-7 through 30. If you could just</p> <p>12 flip through those and let me know if you recognize the</p> <p>13 photographs.</p> <p>14 A. Through 30?</p> <p>15 Q. Yeah. All the way through the end.</p> <p>16 A. Take me a little while.</p> <p>17 (Pause in the proceedings.)</p> <p>18 THE WITNESS: Okay.</p> <p>19 BY MR. TREMAINE:</p> <p>20 Q. Do you know -- do you recognize these</p> <p>21 photographs?</p> <p>22 A. Yes.</p> <p>23 Q. And do you know who took the photographs?</p> <p>24 A. I believe it was Luann.</p> <p>25 Q. Okay. And they were all taken on the same</p>
<p style="text-align: right;">Page 115</p> <p>1 the next step in this process? What happened after</p> <p>2 this?</p> <p>3 A. Seems like the police had called people in,</p> <p>4 interviewed various people. And then seems like when</p> <p>5 they were just closing out their piece of the</p> <p>6 investigation, another anonymous letter was received.</p> <p>7 And that one did come to me. One of the letters did</p> <p>8 come to me and it stated that there were additional</p> <p>9 medications in his locker in -- I believe it was in</p> <p>10 Mesa. I think it was the different cottage.</p> <p>11 So at that point, again consulted with HRB.</p> <p>12 They told us, you know, "Go look in the other locker."</p> <p>13 So we did, and at that point it was -- I believe</p> <p>14 Mr. Chavez was gone that day, so it was me, one of the</p> <p>15 other security officers, who I'm completely blanking</p> <p>16 out her name. It's a female security officer. And I</p> <p>17 believe Peter Schaeffer was involved because Antonio</p> <p>18 was out that day. So we went into -- and searched his</p> <p>19 personal locker.</p> <p>20 Q. If I said the name Luann Gonzales [phonetic],</p> <p>21 would that --</p> <p>22 A. Yes. Luann Gonzales. Thank you.</p> <p>23 Q. Are there -- so it was the three of you that</p> <p>24 went to the Mesa Cottage to look in lockers?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 117</p> <p>1 day?</p> <p>2 A. Yes.</p> <p>3 Q. And they were taken in Mesa Cottage?</p> <p>4 A. Some of them in Mesa. I believe the last one</p> <p>5 we went back to El Paso. Because there were</p> <p>6 different -- he had different lockers, I believe.</p> <p>7 Q. Okay. So can you talk me through the process</p> <p>8 of this search?</p> <p>9 A. The locker was --</p> <p>10 MR. ROMERO: Objection. She wasn't at</p> <p>11 that search, I don't recall, on the 19th.</p> <p>12 THE WITNESS: This is not the police</p> <p>13 search. This is the search that we did. This is not</p> <p>14 the police search.</p> <p>15 MR. ROMERO: On the 19th?</p> <p>16 ALJ COOPER: She said that she was there</p> <p>17 for a search. She and Luann Gonzales and Peter</p> <p>18 Schaeffer, right?</p> <p>19 THE WITNESS: The initial one. This is</p> <p>20 when we went in as employees to search.</p> <p>21 MR. ROMERO: Okay.</p> <p>22 THE WITNESS: This was not the police</p> <p>23 search.</p> <p>24 MR. ROMERO: Sorry.</p> <p>25 ALJ COOPER: That's okay.</p>

<p style="text-align: right;">Page 118</p> <p>1 THE WITNESS: Yeah.</p> <p>2 And some of these pictures, that's a good</p> <p>3 point, could have been taken during the police search.</p> <p>4 I was not present at the police search for the first</p> <p>5 locker -- I mean, the first -- for the first letter,</p> <p>6 but I was at the second one. So this could've been --</p> <p>7 some of these photos might have been taken by the</p> <p>8 police. I thought they were our pictures, but I'm not</p> <p>9 a hundred percent sure. But these are the medications</p> <p>10 that were found in there.</p> <p>11 BY MR. TREMAINE:</p> <p>12 Q. Okay. So during -- we can clarify that search</p> <p>13 and the police involvement, but first the -- these</p> <p>14 photographs, do they fairly and accurately depict the</p> <p>15 medications that you were aware of existing in the</p> <p>16 lockers pursuant to the second search?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And so now if you could please tell us,</p> <p>19 like, how -- explain for us the -- the staff search</p> <p>20 versus the police search. How did that happen?</p> <p>21 A. Well, if you'll look at, like, Exhibit 22-27,</p> <p>22 that's Peter Schaeffer pointing out to the locker that</p> <p>23 we opened. So that's why I'm pretty sure this is the</p> <p>24 photos of the pictures that we did. I'm -- of course,</p> <p>25 I'm not a hundred percent sure they all are, but I know</p>	<p style="text-align: right;">Page 120</p> <p>1 locker 8, with his name on it?</p> <p>2 A. In -- is that it, locker 8? Yeah. In there</p> <p>3 was a Centrum vitamin or multivitamin. I think it was</p> <p>4 a Centrum vitamin pill. That's in 13. And in there</p> <p>5 contained all those different mixtures of pills.</p> <p>6 Q. Okay. Is that fairly depicted in 11, 12, and</p> <p>7 13?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. What is -- in 12 and 13, what is this</p> <p>10 little paper cup at the -- at the bottom? Do you</p> <p>11 know --</p> <p>12 A. I don't remember.</p> <p>13 Q. -- is there medication in that or --</p> <p>14 A. Looks like there is, but I don't remember.</p> <p>15 Q. Okay. And were you aware of what medications</p> <p>16 were contained in the Centrum bottle?</p> <p>17 A. We identified them as hydrocodone, two</p> <p>18 different doses. I believe there were, like, seven to</p> <p>19 nine of the larger, white oblong pills were</p> <p>20 hydrocodone. And then two of the smaller ones were a</p> <p>21 different dose of hydrocodone. And then we also found</p> <p>22 some -- I believe it was ibuprofen, something --</p> <p>23 another medication, like colchicine, I believe, that's</p> <p>24 for gout. So there were different medications mixed in</p> <p>25 here.</p>
<p style="text-align: right;">Page 119</p> <p>1 that one was, because that's Peter pointing to the --</p> <p>2 one of the lockers that we opened in I believe the</p> <p>3 other cottage, because in that first locker we found</p> <p>4 keys to other locks.</p> <p>5 And see, one -- the second letter said</p> <p>6 that -- described the lock that we would find. And I</p> <p>7 don't know if it was an orange stripe or whatever. And</p> <p>8 that's how we found that the -- those keys opened other</p> <p>9 lockers. So there was actually patient medication in I</p> <p>10 believe three other lockers in his lockers.</p> <p>11 Q. Okay. So the -- the first locker that you</p> <p>12 went to, you identified by the lock?</p> <p>13 A. His name was on the first one. So that one</p> <p>14 was easy.</p> <p>15 Q. Okay.</p> <p>16 A. And we broke that one. And then inside we</p> <p>17 found keys to other lockers. So that's how we were</p> <p>18 able to find two other lockers, I believe, in Mesa, and</p> <p>19 then had to go back to El Paso for another one.</p> <p>20 Q. Okay. The -- the one that his name was on, is</p> <p>21 that the big blue one?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So that's the one that is in 22-30?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So what do you recall finding in -- in</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. All contained within the Centrum bottle?</p> <p>2 A. Right. Correct.</p> <p>3 Q. And were there -- were there any patient</p> <p>4 medications located in that locker?</p> <p>5 A. I thought we did find one prescription med</p> <p>6 belonging to a patient in that locker, but I couldn't</p> <p>7 swear to it.</p> <p>8 Q. Okay.</p> <p>9 A. I'm relatively sure there was. I'm trying to</p> <p>10 flip through the pictures.</p> <p>11 Q. Sure.</p> <p>12 A. And I know we found some in another locker</p> <p>13 that was in El Paso. But we were able to get into that</p> <p>14 locker because of a key that we found in --</p> <p>15 Q. Well, how about if -- if we move through the</p> <p>16 rest of the photographs in the process, if you</p> <p>17 recognize --</p> <p>18 A. Okay.</p> <p>19 Q. -- anything, we can refer back to that. I</p> <p>20 don't want to make you flip through --</p> <p>21 A. Okay.</p> <p>22 Q. -- everything.</p> <p>23 So after you got -- went into that locker,</p> <p>24 found the Centrum Silver bottle and the keys to other</p> <p>25 lockers, what did you do then?</p>

<p style="text-align: right;">Page 122</p> <p>1 A. We put a different lock on it, consulted</p> <p>2 again, called the police again, and then they came out</p> <p>3 and did another search.</p> <p>4 Q. Okay. So how about this Exhibit -- indicated</p> <p>5 it was 27. Mr. Schaeffer is standing, pointing to a</p> <p>6 locker and there's bolt cutters in the foreground.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Was that lock cut off and -- on the same day,</p> <p>9 the search of the other lockers?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And did that search of the smaller,</p> <p>12 like, cubby-style lockers occur before or after the</p> <p>13 police search?</p> <p>14 A. Before.</p> <p>15 Q. Before. Okay.</p> <p>16 And can you explain to me what you found in</p> <p>17 the cubby lockers?</p> <p>18 A. That's where I believe we found some patient</p> <p>19 medications also in that locker.</p> <p>20 Q. Can I refer you briefly to 22-14?</p> <p>21 A. That might have been it. Yeah.</p> <p>22 Q. Did you -- at the time that you conducted the</p> <p>23 search, were you aware of -- you were aware of this</p> <p>24 prescription?</p> <p>25 A. I believe I was, yeah.</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. ROMERO: What number is that?</p> <p>2 MR. TREMAINE: 22- --</p> <p>3 THE WITNESS: 18.</p> <p>4 MR. TREMAINE: -- 18.</p> <p>5 BY MR. TREMAINE:</p> <p>6 Q. Okay. So moving on to 22-19, do you recognize</p> <p>7 that photograph?</p> <p>8 A. Yeah. That was one of the other smaller</p> <p>9 lockers where we found patient medication stored.</p> <p>10 Q. Okay. Are those patient medications the same</p> <p>11 ones depicted in 22-20?</p> <p>12 A. I believe so, yes.</p> <p>13 Q. Okay. And again, these are redacted. Were</p> <p>14 you able to identify whether these belonged to</p> <p>15 Mr. Vigil or to someone else?</p> <p>16 A. They belonged to a resident.</p> <p>17 Q. Okay. Did you find any indication in the</p> <p>18 locker that the locker belonged to Mr. Vigil?</p> <p>19 A. I believe that we found a magazine that had</p> <p>20 his name on it.</p> <p>21 Q. Could I refer you to 22-21 and 22-22.</p> <p>22 A. Okay. That -- yeah, that -- I'm pretty sure</p> <p>23 we also had -- might have been one of the other lockers</p> <p>24 that had a magazine that was in his name. But, yeah,</p> <p>25 this was in the locker also.</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. No problem. Okay.</p> <p>2 A. Because I do recall that -- I don't remember</p> <p>3 what the medication was, who it belonged to, but I knew</p> <p>4 that we found some patient --</p> <p>5 Q. Okay.</p> <p>6 A. -- medication in those lockers.</p> <p>7 Q. As you can see, this is redacted --</p> <p>8 A. Uh-huh.</p> <p>9 Q. -- for patient information. Was -- did this</p> <p>10 belong to John Vigil or --</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 A. It was an antibiotic. I believe it says</p> <p>14 "clindamycin."</p> <p>15 Q. Okay. And Exhibit 22-18, the prescription</p> <p>16 depicted here in the bottle next to the Centrum.</p> <p>17 A. Okay. That's where it was.</p> <p>18 Q. Is that --</p> <p>19 A. Yeah.</p> <p>20 Q. Can you -- do you recall --</p> <p>21 A. Yeah.</p> <p>22 Q. -- if that was patient medication or if it was</p> <p>23 Mr. Vigil's?</p> <p>24 A. I believe that was the patient medication.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Okay. And how about 22-23? Is this the same</p> <p>2 or different cubby locker?</p> <p>3 A. I'm not -- I mean, I don't know if it was the</p> <p>4 same as the previous one or not. I know that we locked</p> <p>5 at three different lockers.</p> <p>6 Q. Okay.</p> <p>7 A. This might have been one of the last ones that</p> <p>8 we looked at.</p> <p>9 Q. Okay.</p> <p>10 ALJ COOPER: You went through three</p> <p>11 different cubby lockers?</p> <p>12 THE WITNESS: We -- the main one and then</p> <p>13 two --</p> <p>14 ALJ COOPER: And then two cubby lockers.</p> <p>15 THE WITNESS: Yeah.</p> <p>16 ALJ COOPER: Okay.</p> <p>17 THE WITNESS: Actually, it might have</p> <p>18 been two cubby lockers in Mesa and then one at El Paso.</p> <p>19 But the one in El Paso I don't believe we found. We</p> <p>20 went back to the other one. I don't think we found any</p> <p>21 patient medication in that one.</p> <p>22 MR. ROMERO: Your Honor, if I may</p> <p>23 interject just real quickly, because this has gotten</p> <p>24 confusing --</p> <p>25 ALJ COOPER: Uh-huh.</p>

<p style="text-align: right;">Page 126</p> <p>1 MR. ROMERO: -- to me.</p> <p>2 The Notice of Final Action identifies on</p> <p>3 the second search patients' prescription medications</p> <p>4 being found in -- in the El Paso Cottage lockers that</p> <p>5 were searched. In other words, there was the</p> <p>6 hydrocodone that was found in the Mesa Cottage big</p> <p>7 locker, and I think that's referenced in the -- let me</p> <p>8 just make sure I'm not talking out of school like I was</p> <p>9 a while ago, Judge.</p> <p>10 Regarding the June 19th search, the</p> <p>11 search of a locker with -- in Mesa found these -- these</p> <p>12 medications, the hydrocodone, clindamycin, and so</p> <p>13 forth. There's no reference to any of those</p> <p>14 medications being patient medications or patient</p> <p>15 prescription bottles.</p> <p>16 And then the -- subsequently, in the next</p> <p>17 paragraph, the search proceeded to El Paso Cottage and</p> <p>18 in a locker containing mail with Vigil's name in it,</p> <p>19 three prescription medications were found for two</p> <p>20 separate patients. Two of the bottles were for one</p> <p>21 patient and one for a second.</p> <p>22 ALJ COOPER: Uh-huh.</p> <p>23 MR. ROMERO: So -- and that -- that had</p> <p>24 been my operating assumption, and that's what's</p> <p>25 alleged. So I'm just a little bit confused about -- I</p>	<p style="text-align: right;">Page 128</p> <p>1 BY MR. TREMAINE:</p> <p>2 Q. Okay. Is it safe to say that you are certain</p> <p>3 that you found patient medications in a locker that you</p> <p>4 identified as belonging to Mr. Vigil in the second</p> <p>5 search?</p> <p>6 A. Yes. I'm sure of that.</p> <p>7 Q. Okay. So after the -- you assisted in</p> <p>8 conducting the second search prior to the law</p> <p>9 enforcement search, what did you do -- and the photos</p> <p>10 were taken, what did you do next?</p> <p>11 A. I contacted the -- HRB again; Elona.</p> <p>12 Contacted the police again. They returned and searched</p> <p>13 those -- the locker also.</p> <p>14 Q. The police did?</p> <p>15 A. The police did.</p> <p>16 Q. All right. And what happened after that?</p> <p>17 A. I believe that they made the decision that</p> <p>18 they were going to take it to the DA's office to find</p> <p>19 out if there was sufficient information to -- to get --</p> <p>20 to bind it over to court or whatever they do.</p> <p>21 So they did complete an investigation.</p> <p>22 They -- they did contact me when they were interviewing</p> <p>23 different employees.</p> <p>24 Q. Okay.</p> <p>25 A. And they also interviewed Mr. Vigil.</p>
<p style="text-align: right;">Page 127</p> <p>1 think there was a reference to patient medication in</p> <p>2 the Mesa Cottage also.</p> <p>3 THE WITNESS: Let me just say that this</p> <p>4 was 2015, okay? I do not recall exactly which exact</p> <p>5 cottage or lockers they were found in. I was not part</p> <p>6 of the investigation. I was not part of drafting the</p> <p>7 letter, so I can't speak to that at all. That would be</p> <p>8 somebody else.</p> <p>9 BY MR. TREMAINE:</p> <p>10 Q. Okay. The --</p> <p>11 A. And I -- you know, the -- El Paso Cottage is</p> <p>12 where we found the medication on the first search, in</p> <p>13 his office, right? That's where his office was.</p> <p>14 Q. Uh-huh.</p> <p>15 A. And as I recall, we searched both cottages,</p> <p>16 Mesa and El Paso. So it is possible that I might be</p> <p>17 confused as to which cottage the medication was found</p> <p>18 on --</p> <p>19 ALJ COOPER: On the second --</p> <p>20 THE WITNESS: -- on the second time.</p> <p>21 ALJ COOPER: On the second search.</p> <p>22 THE WITNESS: It's possible, because we</p> <p>23 searched both cottages, so I might be wrong on where we</p> <p>24 found -- I know that they were in more than one locker.</p> <p>25 That, I remember. So it is possible that I'm confused.</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. And did you have any involvement after that</p> <p>2 point?</p> <p>3 A. After that investigation?</p> <p>4 Q. Uh-huh.</p> <p>5 A. No.</p> <p>6 Q. Okay. As the now facility administrator and</p> <p>7 the then executive nurse administrator, what -- what</p> <p>8 issues are posed by this type of medication storage?</p> <p>9 A. Well, it seems to -- I mean, policy</p> <p>10 violations. Handling money. Improperly storing</p> <p>11 medication. Having patient funds and money within your</p> <p>12 possession instead of in the med room, where they</p> <p>13 should've been. So numerous policy violation [sic].</p> <p>14 Possible exploitation. Most likely</p> <p>15 exploitation of patients. So using -- or having in</p> <p>16 possession patient money and medications that don't</p> <p>17 belong to you.</p> <p>18 Q. Okay. One brief moment.</p> <p>19 Can you speak to knowledge of trainings</p> <p>20 that psych tech supervisors within the assisted living</p> <p>21 facility received regarding medication storage; in</p> <p>22 particular, storage of expired medication?</p> <p>23 A. All psych techs, not just the supervisors,</p> <p>24 were required to attend a training or do a training on</p> <p>25 how to safely assist in the self-administration of</p>